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No. 08-989

Supreme Court, U.S.
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IN THE
Supreme Court of the United States

HAROLD L. LEONARD
d/b/a THE LEONARD CLINIC OF CHIROPRACTIC,
Petitioner,

v.

EDUCATORS MUTUAL LIFE INSURANCE COMPANY,
Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit**

**RESPONDENT EDUCATORS MUTUAL
LIFE INSURANCE COMPANY'S
BRIEF IN OPPOSITION**

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March 6, 2009

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COUNTERSTATEMENT OF THE QUESTION FOR REVIEW

Whether the Third Circuit erred in summarily affirming the district court's determination that petitioner was ineligible for insurance coverage because of his intentionally misleading statements.

**CORPORATE DISCLOSURE AGREEMENT
PURSUANT TO SUPREME COURT RULE 29.6**

After initiation of this litigation, Educators Mutual Life Insurance Company changed its name to Eastern Life & Health Insurance Company. Eastern Life & Health Insurance Company converted from a mutual company to a stock company and formed Eastern Insurance Holdings, Inc. Ultimately, Eastern Life & Health Insurance Company became and is a wholly-owned subsidiary of Eastern Insurance Holdings, Inc. As part of this process, Eastern Insurance Holdings, Inc. purchased all of the outstanding stock of Eastern Holding Company Ltd. and its wholly-owned subsidiaries, Eastern Alliance Insurance Company, Allied Eastern Indemnity Company, Employers Alliance, Inc., Global Alliance Holdings, Ltd., Global Alliance Statutory Trust I, Eastern Services Corporation, and Eastern Re Ltd. S.P.C.

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INTRODUCTION

Petitioner Harold L. Leonard ("Leonard") intentionally misrepresented material facts to Educators Mutual Life Insurance Company ("Educators") to obtain health insurance from Educators, and he continued to misrepresent facts over a period of several years. Under the "true" facts, Leonard was not eligible for coverage, and once Educators learned these facts, Educators ceased paying benefits and

informed Leonard in a letter of the reason it was no longer paying benefits. The district court reviewed the record and concluded that more than ample evidence supported Educator's determination. The court of appeals affirmed the district court's decision for the same reasons.

In his Petition, Leonard seeks to have this Court consider the question of what standard of review should be utilized by the courts in reviewing an ERISA plan administrator's action where the administrator has not exercised discretion in making an eligibility determination. Petitioner argues that the court should utilize the *de novo* standard of review as opposed to an arbitrary and capricious standard of review, and Petitioner suggests the circuits are split on this issue.

The circuit conflict to which the Petitioner points, to the extent it exists, is not relevant to this case. This case does not involve a factual scenario where the plan administrator failed to exercise discretion in an eligibility determination. Furthermore, this case does not even present the situation where the plan administrator did not timely exercise discretion in an eligibility determination. Educators timely exercised its discretion which the district court implicitly recognized. Furthermore, even if the *de novo* standard, as opposed to the arbitrary and capricious standard, is applied here, the outcome would not change. The district court made clear that, even under a *de novo* standard of review, Educators' decision to terminate benefits would be upheld.

COUNTERSTATEMENT OF THE FACTS

In July, 1990, The Leonard Clinic of Chiropractic ("Clinic")¹ applied for group medical and group life insurance coverage for its employees through Educators. At the time of the application, Leonard was licensed as a doctor of chiropractic in Pennsylvania and operated his business in Lancaster, Pennsylvania under the name of the Clinic. Diane Leonard, the wife of Leonard, was represented to Educators as employed on a full-time basis by the Clinic as its office manager. In reliance upon the representations of the Clinic and of the individual employees of the Clinic, and consistent with its normal practices, Educators issued a master policy to the Clinic and certificates of insurance to the three identified employees.

For the Clinic to be an employer eligible for group coverage for employees, the Clinic needed to be an ongoing business operation with at least three full-time employees (later reduced to two) working at least 30 hours per week and compensated for their services. For an individual employee to be eligible for the group coverage, the individual employee needed to be working at least 30 hours per week in the operation of the Clinic's business and receiving full compensation for the employment services.

¹ Before the court of appeals and in his Petition, Leonard has identified himself as the "Clinic." However, in the district court, Leonard recognized the distinction between himself and the Clinic. The caption of the case, as filed in the district court, is "Harold L. Leonard and the Leonard Clinic of Chiropractic." In the complaint as filed in the district court, Leonard indicated there were two plaintiffs, Leonard individually and the Clinic, and throughout the numbered paragraphs, the complaint referenced Leonard and the Clinic as two separate entities.

In the years following 1990, during the renewal process, Leonard continued to represent to Educators that the Clinic was an ongoing business conducting operations in Lancaster, Pennsylvania, with two eligible (full-time, compensated) employees. Leonard also continued to represent that he and his wife were working full time (at least 30 hours per week) for the Clinic.

However, none of those representations, all material to coverage, was true. In the years prior to 2003, the Clinic had ceased business operations, Leonard was no longer a licensed chiropractor in Pennsylvania, and neither Leonard nor his wife was employed in any capacity by the Clinic, let alone employed full-time.

In 2003, Educators obtained information that the Clinic was not an active business operation and that the Leonards were not full-time employees of the Clinic. Educators, as the plan administrator, made a benefits determination in 2003, informing both Harold Leonard and Diane Leonard in a letter that no further benefits would be paid because they were not full-time employees for the Clinic (Pet. App. 96a). At the same time, Educators invited Harold and Diane Leonard to submit additional information, if in fact they were full-time employees of the Clinic. The Leonards did not provide any additional information, and shortly thereafter, Educators initiated a declaratory judgment action in state court. Leonard then initiated the present action in district court. After discovery in the federal court action, the matter was scheduled to proceed as a non-jury trial. However, on the day set for trial, after a discussion with the Judge, the parties agreed not to proceed with a non-jury trial, but rather formalize an administrative

appeal process. Educators thereafter issued a formal written determination, which in effect constituted its determination following an administrative appeal.

The administrative record was then submitted to the district court, which reviewed the record and concluded that ample evidence supported Educators' determination that Leonard was not eligible for benefits. In its written decision, the trial court determined that the appropriate standard of review was the "heightened form of arbitrary and capricious" standard. Although the court employed the arbitrary and capricious standard of review, the district court also made an additional determination, critical here. After reviewing the administrative record, in which the district court found ample evidence to support the administrator's decision under the arbitrary and capricious standard of review, the district court expressly held:

"I would reach the same result even if I were to apply a de novo standard of review."

(Pet. App. 45a.)

In a memorandum opinion, the court of appeals affirmed the district court for the reasons set forth by the district court. (Pet. App. 1a.)

REASONS FOR DENYING THE PETITION

I. The Factual Record Does Not Raise The Legal Issue Presented By Petitioner.

With the question as presented, Petitioner asks this Court to determine the standard to be applied by courts in reviewing an eligibility determination where the administrator of an ERISA benefit plan has failed to exercise discretion. In other words, the factual predicate to the issue as presented by the

Petitioner requires a record where the administrator of an ERISA benefit plan failed to exercise discretion in an eligibility determination.

This case does not present that question. To the contrary, as established in the letter from Educators to Leonard (Pet. App. 96a), as soon as Educators gathered the facts to support its determination that Leonard was no longer eligible, Educators ceased paying benefits and notified Leonard as to the reason for its decision to terminate the payment of benefits. Therefore, Educators exercised its discretion in the eligibility determination and did so before any litigation occurred.

Furthermore, Leonard never asserted at the district court level that Educators had failed to make a benefits determination. To the contrary, at the district court level, Leonard acknowledged that Educators had exercised its discretion in making an eligibility determination, but argued that the *de novo* standard of review should apply because Educators had allegedly not reserved discretionary authority in the Plan documents. It was not until Petitioner was before the court of appeals that he contended that Educators had failed to exercise its discretion in a timely fashion, arguing that the claims determination first occurred in August, 2006, after commencement of litigation in the district court. As discussed above, Educators' review of the administrative record while the matter was in litigation was part of the administrative appeal process undertaken with the consent of Leonard, not the initial eligibility determination. Educators' initial exercise of discretion in the eligibility determination occurred in 2003.

Not only does the record establish that Educators in fact made an eligibility determination, but the

record establishes, at least implicitly, that the trial court determined Educators had timely exercised its discretion in making an eligibility determination. In effect, Petitioner is now attempting to challenge a factual finding by the district court, a factual finding which was not disturbed by the court of appeals. Such a factual finding plainly does not warrant this Court's review. But with this as a finding of fact, it is established that Educators exercised its discretion and did so in a timely fashion. The district court reviewed the exercise of discretion by Educators. Hence, this case does not present this Court with the question of what is the appropriate standard of review where the administrator has failed to exercise discretion in an eligibility determination.

II. A Different Standard Of Review Will Not Alter The Outcome Of This Case.

Petitioner purports to ask this Court to review the appropriate standard of review under a particular fact pattern (which does not exist here). The district court determined that the appropriate standard of review was a "significantly heightened arbitrary and capricious" standard. Petitioner had argued for the district court to apply a *de novo* standard. The ultimate relief Petitioner is asking, if this case were to be reversed by this Court, is to have the district court review Educators' eligibility determination under a *de novo* standard of review. However, the district court has already done so and rejected Petitioner's claim.

At the end of its thorough opinion, the district court concluded that the record supported Educators' denial of benefits under the significantly heightened arbitrary and capricious standard of review. Then, the court expressly stated that the record also sup-

ported Educators' denial of benefits even under a *de novo* standard of review. The court stated:

"I would reach the same result even if I were to apply a *de novo* standard of review."

(Pet. App. 45a.)

The facts supporting Educators' decision to deny benefits to Leonard were so compelling that the standard of review is irrelevant. Consequently, this Court's determination of the question as presented by the Petitioner will have no effect upon the outcome of this case. Accordingly, this case presents an unusually "poor vehicle" for this Court to resolve any potential circuit conflict.² Eugene Gressman, *et al.*, *Supreme Court Practice* 504 (9th ed. 2007).

² The circuit split identified by the Petitioner, on the issue of the appropriate standard of review to be applied where the administrator fails to exercise discretion, represents varying factual analyses by the circuits, as much as it represents a divergence in legal principles to be applied. In some cases, the courts are addressing a situation where the administrator has not exercised discretion at all. In other cases, the administrator has exercised discretion, but arguably did not do so in a "timely" fashion. Some courts then struggle with the question of whether the administrator was in substantial compliance with any time constraints, although not technically timely. Finally, in other cases, the courts struggle with an administrator's discretion which is not exercised until after the initiation of litigation by a claimant. Reviewed through this prism, the reported decisions reflect cases that turn on a fact specific analysis rather than different results caused by a circuit split on a legal issue. More importantly, for the reasons discussed above, the administrator's decision here would be upheld under any standard of review.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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